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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R No.121 of 1998
Date of decision:8.12.2006

Commissioner of Income-Tax, Shimla ...Petitioner

Versus

Shri W.N.Kahol, Development Officer, LIC of India, Theog (HP)

...Respondent

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Dr.N.L.Sharda, Advocate for the revenue

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JUDGMENT

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh arising out of its order dated 16.10.1997 passed in I.T.A.No.691/Chandi/95, in respect of the assessment year 1992-93.

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that adjustment on account of expenditure claimed against incentive bonus received by a development officer of the Life Insurance Corpn. Of India could not be made u/s 143(1) (a) as the matter was debatable and capable of two opinions?

The assessee filed return under Section 143(1) (a) of the Income Tax Act, 1961 (for short "the Act") and claimed incentive bonus received by him in his capacity as Development Officer in the Life Insurance Corporation of India as expenditure. The same was disallowed by the Assessing Officer and was added to the income of the assessee. The assessee applied for relief under Section 154 of the

Act, which was rejected.

The Appellate Authority set aside the view taken by the Assessing Officer and held that since issue was debatable on which there could be two opinions, the same is out side the scope of adjustment for processing the return under section 143(1)(a) of the Act. The said view was upheld by the Tribunal.

We have heard learned counsel for the revenue and perused the record.

We find that question has been gone into by this Court in **Commissioner of Income-Tax Vs.Saurabh Kulshreshtra (2001) 251 ITR 571** and it was held that Assessing Officer could not have invoked the provisions of Section 143(1)(a) of the Act for disallowing deductions claimed by the assessee in respect of incentive bonus. The same view was taken by Madhya Pradesh High Court in **Commissioner of Income-Tax Vs. Shikharchand Jain (2003) 263 ITR 221** and the Calcutta High Court in **G.K.W.Ltd. Vs. Commissioner of Income-tax (2005) 273 ITR 380** wherein it was observed as under:-

> "....In this respect, we find that the scope of section 143 (1)(a), as was prevailing at the relevant point of time, permitted the Assessing Officer without requiring the presence of the assessee or production by him of any evidence in support of the return, to make an assessment of the total income or loss after making such adjustments to the income or loss declared in the return as are required to be made under clause (b) of the said sub-section. Upon considering the scope of section 143(1) (a), we are of the opinion that when the Assessing Officer proposes to differ with the disclosure made in the return, an opportunity of hearing to the assessee is required and therefore, such matter can be gone into under section 143(3) serving notice under section 143(2) and not under section 143(1)(a)."

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In view of the above, the question referred is answered against the Revenue and in favour of the assessee.

The reference is disposed of.

(Adarsh Kumar Goel)
Judge

December 08,2006 **(Rajesh Bindal)**
Pka **Judge**